

STATEMENT OF BENITA POTTERS
ENROLLED MEMBER OF THE
AGUA CALIENTE BAND OF CAHUILLA INDIANS
AND ALLOTTEE ENTITLED TO EQUALIZATION
UNDER THE AGUA CALIENTE
EQUALIZATION OF ALLOTMENTS ACT OF 1959

AT THE HEARING BEFORE
THE SENATE COMMITTEE ON INDIAN AFFAIRS
IN OPPOSITION TO H.R. 700

JULY 8,1998

Good morning. My name is Benita Potters. I am an enrolled member of the Agua Caliente Band of Cahuilla Indians, and an allottee entitled to equalization under the Agua Caliente Equalization of Allotments Act of 1959. Thank you for allowing me to testify before the Committee today. I would like to go on record as opposing H.R. 700 and the amendment to H.R. 700 supported by the Tribal Council.

My concerns are shared by Tribal members Anita V. Jackson, Larry Olinger, and Diane Loeffler, as well as Mary Jean Dial, an heir to a deceased, allotted tribal member. I am joined today by my legal counsel, Bonnie Garland Guss, who will explain in detail the legal basis for my opposition to H.R. 700. My testimony will focus on three issues. First, that the Tribal Council misrepresented H.R. 700 to Congress by maintaining that the Tribe had performed an appraisal of Parcel B. Secondly, that the Bureau of Indian Affairs breached its fiduciary duty to me and the other allottees. Thirdly, that H.R. 700 will destroy the level of equalization guaranteed under the Equalization Act.

H.R. 700 amends the Equalization Act of 1959 by eliminating the exclusive rights of the unequalized allottees and heirs of allottees to distributions of income from Parcel B, which is currently operated as a hotel and gambling casino. As passed by the House of Representatives, H.R. 700 provided for a one time payment of \$22,000 to the allottees in exchange for extinguishing the rights of the allottees to the Parcel B revenue.

I asked the Tribal Council for documentation on how the \$22,000 payment was determined, but to no avail. I asked the Bureau of Indian Affairs for a copy of the appraisal that was mentioned in the statement of the Assistant Secretary for Indian Affairs, Department of the Interior, Ada Deer, at the hearing before the House Resources Committee when she said, "The 1993 appraised value of the parcel was estimated to be worth approximately \$22,000 per allottee entitled to equalization." My letter was forwarded to the Sacramento Area Director by the Washington Director. The Sacramento Area Director then wrote on October 7, 1997, that they and the Palm Springs Field Office were never provided with a copy of the appraisal.

The Tribe finally admitted that there was no appraisal of Parcel B. I thought that the Tribe would then appraise Parcel B and amend H.R. 700 to include a payment to the allottees based on the appraisal. Instead, the Tribe proposed an amendment to H.R. 700 which eliminated the \$22,000 payment to the

allottees and provided that my rights in Parcel B, guaranteed by federal law, would be extinguished without any compensation. I believe this is both unfair and illegal.

I also have concerns about how the Bureau of Indian Affairs handled funds from Parcel B. It is my understanding that the revenue from Parcel B was deposited with the Bureau of Indian Affairs in a special account. Since the allottees have never been furnished with an accounting of how Parcel B funds were expended, I do not know whether the Bureau of Indian Affairs handled this account properly.

I am also very concerned about possible future discrimination by the Tribe against the allottees. For two years I have tried to have a meaningful dialogue with the Tribal Council to express my concerns. My attempts have fallen on deaf ears. I have been portrayed in the Minutes of the Tribal Council as "selfish" and my concerns "ludicrous." H.R. 700 does not prevent the Tribal Council from penalizing the allottees after the bill is passed. To me, this is a fatal flaw.

Other serious concerns I have are regarding the termination of the rights of my children to Parcel B distributions. My children cannot be members of the Agua Caliente tribe because they do not meet the Tribal Constitution requirements for membership. They currently have the right to share revenue from Parcel B as my heirs. This right will be eliminated if H.R. 700 is passed because they are ineligible for per capita distributions.

I would now like to correct the Tribal Council's misrepresentations regarding Parcel B. First, the Tribal Council maintains that the Parcel B issue has plagued the Tribe for 50 years. I do not see how this can be, since the Tribal Council has made no distributions of Parcel B revenue to the allottees, and has spent and invested Parcel B income with no accounting or disclosure.

The Tribal Council maintains that it wants H.R. 700 to pass quickly so housing assistance and health insurance can be provided to the Tribe's members. The Tribe already supplies health insurance and tuition assistance to its members. Other aid is offered through the United States government assistance programs. If additional Tribal programs are needed, there are ample sources of funds without amending the Equalization Act. The Tribe can use the revenue from Parcel A, operated as a health spa with some gaming machines, without restriction, and the Tribe owns other land which generates income and could be used as sources of funding for Tribal assistance programs. The true motivation behind the passage of H.R. 700 is not to supply funds for Tribal assistance programs. The true motivation is to alter the distribution rights to gambling casino revenue.

The Tribal Council says that once H.R. 700 is passed, income distributions from the gambling casino can be distributed equally to all members of the Tribe, allotted and un-allotted, which is more fair. In fact, passage of H.R. 700 would lead to an unfair distribution of Parcel B income. The purpose of the provision in the Equalization Act which grants the exclusive right to income distributions from

Parcel B to the unequalized allottees was intended to make up for the great disparity between the allottees who received allotments of up to \$629,000 prior to the passage of the Act, and those unequalized allottees who, after the passage of the Act, received allotments valued at only \$335,000. If H.R. 700 were passed, those allottees who were not entitled to equalization under the Equalization

Act would receive the same per capita distributions of Parcel B income as the allottees entitled to equalization. This is a very unfair result which destroys the degree of equalization which the Equalization Act was designed to guarantee.

H.R. 700 rearranges who is eligible for distributions of revenue from the gambling casino and hotel located on Parcel B by unfairly favoring families with many children over smaller families, since the distributions would be made per capita, even to minors. H.R. 700 also unfairly eliminates the right to income distributions of the heirs of the allottees who cannot be members of the Tribe because they do not possess at least 1/8 degree Indian blood. Therefore, H.R. 700 does not result in fairer distribution of revenue, just a different distribution, favoring some families, eliminating the rights of others.

The Tribal Council says that the majority of the Tribal members support H.R. 700. This may be true, but the Tribal Council manipulated the membership by saying that there will be no distributions of Parcel B funds until H.R. 700 is passed. In other words, the Tribal Council's position to the Tribal members is that if you want income distributions from the gambling casino, you have to support H.R. 700.

I have tried for over two years to be heard on this issue. I agree that a speedy resolution of the Parcel B issue is in the best interests of the Tribe, but H.R. 700 is an unacceptable solution. I think it is in everyone's best interest to correct the bill now, so I do not have to pursue my rights against the United States and the Department of the Interior through the courts. My attorney has drafted an amendment to H.R. 700 which accommodates my concerns and those of other allottees entitled to equalization. I respectfully request that you support that amendment to H.R. 700. I now yield to my attorney, Bonnie Garland Guss.